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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:

Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996

CC Docket No. 96-98
FCC 96-182

To: The Commission

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COMMENTS OF CELPAGE, INC.

Frederick M. Joyce
Elaine D. Critides
Its Attorneys

JOYCE & JACOBS, Attys. at Law, L.L.P.
1019 19th Street, N.W.
14th Floor, P.O. Box 2
Washington, D.C. 20036
(202) 457-0100

Date: May 20, 1996

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COMMENTS OF CELPAGE, INC.

Celpage, Inc., by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Comments in response to the Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding.¹

I. Statement of Interest

Celpage is the parent company of Pan Am License Holdings, Inc., a licensee of Private Carrier Paging ("PCP") and Radio Common Carrier ("RCC") facilities throughout the Commonwealth of Puerto Rico and the United States Virgin Islands.² Celpage has grown to become the largest paging company in Puerto Rico. Celpage relies on Puerto Rico Telephone Company ("PRTC"), the incumbent local exchange carrier ("LEC"), to provide interconnection and number administration services necessary for the provision of interconnected paging

¹ FCC 96-182 (released April 19, 1996).

² With the implementation of Sections 3(n) and 332 of the Communications Act in the CMRS Second Report and Order, 9 FCC Rcd 1411 (1994), PCP and RCC paging services were reclassified as commercial mobile radio services ("CMRS").

services.

Section 251 of the Telecommunications Act of 1996 ("the Telecom Act") imparts additional obligations on LECs in carrying out negotiations with other common carriers, the provisions of interconnection, resale, collocation of equipment and unbundled access to the LEC's network components on a nondiscriminatory basis. The PRTC has made it clear that it intends to petition the Puerto Rico Public Service Commission ("PRPSC") for relief from the implementation of the duties imposed by Section 251(c)³, by claiming it qualifies for an exemption under Section 251(f), on the basis that it is a "rural telephone company."

Celpage is well-qualified to comment on the proposals contained in the NPRM. As a provider of one-way signaling services under both Parts 22 and 90 in Puerto Rico, Celpage will be adversely affected if the Commission affirmatively recognizes the PRTC as a rural telephone company. Due to the unique structure and relationship between the PRTC and the Puerto Rico Public Service Commission ("PRPSC"), and due to a lengthy history of unredressed interconnection problems with PRTC, Celpage requests that the FCC adopts special safeguards for the purposes of implementing the provisions of Sections 251, 252, and 253 of the Telecom Act in Puerto Rico.

II. Summary of the NPRM.

In the NPRM, the Commission began the implementation process for sections 251, 252 and 253 of the Telecom Act. The statutory language of these provisions authorizes the FCC to utilize its rule making power to implement the provisions of Section 251.

³ 47 U.S.C. 251(c).

With the exception of Rural Telephone Companies⁴, the FCC will be authorized to regulate incumbent LECs in such a manner as to enforce the Telecom Act's provisions regarding interconnection, collocation, access to unbundled network elements, resale obligations, good-faith negotiating, dialing parity, prompt technical notifications and assurance of access to rights of way, so that the competitive market conditions envisioned by the 1996 Telecom Act are achieved. Nonetheless, Section 251(f)(1) of the Telecom Act provides an exemption for LECs that qualify as rural telephone companies.

Rural LECs will be afforded special consideration prior to the imposition of the obligations to which all other incumbent LECs will be subject under the Telecom Act. Rural telephone companies may only be subject to Section 251(c)'s statutory obligations upon the occurrence of two conditions. First, a rural telephone company must be presented with a "bona fide" request for interconnection or other service required by the Act. Second, the statute requires that the governing state or local public utility commission must determine: 1) the request is not technically or economically infeasible; and 2) that treating the exempted LEC as an incumbent will be consistent with Section 254 of the Act.⁵

⁴ 47 U.S.C. § 153(37) defines Rural Telephone Companies as follows: "Rural telephone company" means a local exchange carrier operating entity to the extent that such entity-- (A) provides common carrier service to any local exchange carrier study area that does not include either-- (i) any incorporated place of 10,000 inhabitants or more or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Census of August 10, 1993; (B) provides telephone exchange service, including exchange access to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."

⁵ 47 U.S.C. § 264 (this provision of the Telecom Act addresses universal service).

III. PRTC Does Not Qualify as a Rural Telephone Company.

Celpage has reason to believe that the PRTC will try to be excepted as a "Rural Telephone Company." The Commonwealth of Puerto Rico is home to more than 3.5 million American citizens. See 1990 Census, Land Area and Population Density at 183. Based upon the population figures and the fact that the PRTC and its affiliates are the only incumbent LECs that service this market area, it is obvious that PRTC would not qualify as a Rural Telephone Company. This is an obvious attempt to shirk the more onerous statutory obligations that the Telecom Act would otherwise impart on PRTC, a verifiable incumbent.

PRTC's request is a sham, and could cause serious harm to CMRS operators in Puerto Rico for at least three reasons: (1) PRTC has a unique statutory exemption from local statutory regulations; (2) PRTC in no way meets the FCC's definition of "Rural Telephone Company," as that term is defined the FCC; and (3) PRTC has a long and sorry record of failing to meet its interconnection obligations to CMRS providers. For all these reasons, the FCC should specifically rule that PRTC is not a Rural Telephone Company, and that PRTC must honor its interconnection and other statutory duties under the Telecom Act.

IV. PRTC's Exemption from Local Regulatory Review.

The PRTC and its affiliates⁶ have an express statutory exemption under the Commonwealth of Puerto Rico's laws which enables it to evade the binding authority of review by the PRPSC. Under the local laws of Puerto Rico, the PRTC and its affiliates are excluded

⁶ 27 L.P.R.A. § 401

from the regulatory authority of the Commonwealth's public utilities commission.⁷ The statute specifically exempts, "the rates, rights and charges and other terms and conditions of services offered by the [PRTA]." Accordingly, it follows that the statute has been interpreted to preclude the power of any department or governmental agency of the Commonwealth of Puerto Rico over the use of telecommunications facilities and services offered by PRTC and its affiliates.⁸ That exemption coupled with an exemption under Section 251(f), would effectively insulate the PRTC and its affiliates from all the statutory interconnect obligations.

V. Demonstrable History of Discriminatory Practices by the PRTC.

The PRTC and its affiliates are the only incumbent LECs operating on the entire island of Puerto Rico. PRTC has already deterred Celpage's attempts to improve its services by: (a) refusing to provide appropriate interconnection at just and reasonable rates, including severely dilatory responses to Celpage's service requests; (b) engaging in predatory pricing by cross-subsidizing its paging service with funds from its local telephone service; and (c) denying Celpage payment for calls completed at Celpage's terminals.

In the past, Celpage has also suffered anti-competitive harm caused by PRTC's discriminatory provision of the NXX codes necessary to expand its paging service to customers. The delay in processing Celpage's requests for service have caused severe delays in the deployment of services to the consumers. Celpage was unable to expand its services during this time period although PRTC was administering the NXX requests of its affiliated cellular

⁷ A-Plus Information Processing Corp. v. Puerto Rico Telephone Co., Case No. 0-84-625 (Supreme Court Puerto Rico 1993); (in this case it was held that the PRTA, PRTC and PRCA were not subject to the regulatory power of the PRPSC).

⁸ Id.

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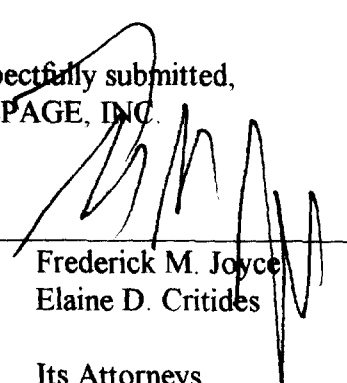
company with these codes which are necessary for the provision of interconnected service to the public.

Conclusion

For all the foregoing reasons, Celpage respectfully requests that the Commission specifically rule that the PRTC does not qualify as a Rural Telephone Company, and that the PRTC is bound to honor the Telecom Act's competitive mandates. Without affirmative action by the FCC, the citizens of Puerto Rico may be deprived of the benefits of added competition in the LEC CMRS market. The PRTC has a long-established history of discriminating in its provision of interconnection and number administration services to Celpage and other CMRS providers. The PRTC clearly does not qualify as a Rural Telephone Company as that term is defined by the statute. Any attempt by the PRTC to assert its status as a rural telephone company would constitute a sham due to the size and demographics of its relevant market area. Circumvention of the duties imposed by Section 251(c), will produce anti-competitive results contrary to the express purposes of the 1996 Telecom Act.

Respectfully submitted,
CELPAGE, INC.

By:


Frederick M. Joyce
Elaine D. Critides

Its Attorneys

JOYCE & JACOBS, Attorneys at Law, L.L.P.
1019 19th Street, N.W.
Fourteenth Floor - PH2
Washington, D.C. 20036
(202) 457-0100

May 20, 1996

CERTIFICATE OF SERVICE

I, Regina Wingfield, a legal secretary in the law firm of Joyce & Jacobs, Attorneys at Law, LLP, do hereby certify that on this 20th day of May, 1996, copies of the foregoing Comments of Celpage, Inc. were mailed, postage prepaid to the following:

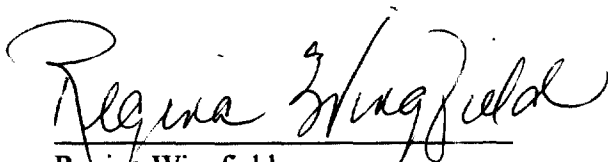
Chairman Reed Hundt*
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner James H. Quello*
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Susan Ness*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Commissioner Rachelle B. Chong*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Regina Keeney, Chief
Federal Communications Commission
Common carrier Bureau
1919 M Street, N.W.
Room 500
Washington, D.C. 20554



Regina Wingfield

* Hand Delivery

Ms. Dorothy Conway*
Federal Communications Commission
1919 M Street, NW Room 234
Washington, DC 20554
(dconway@fcc.gov)

Timothy Fain, Desk Officer
Office of Management and Budget
10236 NEOB, 725 17th Street, N.W.
Washington, DC 20503